Supreme Court, U.S.
FILED

991165 JAN 11 2000

OFFICE OF THE CLERK

No. 99-

In the

Supreme Court of the United States

JERON J. LAFARGUE and SUSAN KYLE, et al.,
Petitioners

v.

THE UNITED STATES OF AMERICA;
LOUISIANA INTRASTATE GAS COMPANY, L.L.C.,
Respondents

On Petition For Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

GREGG L. SPYRIDON
SPYRIDON, KOCH, WALLACE
& PALERMO
3838 N. Causeway Boulevard, Suite 3010
Metairie, Louisiana 70002
Telephone: (504) 830-7800
Counsel for Petitioners

QUESTIONS PRESENTED FOR REVIEW

The questions presented for review by this Court include the following:

1. Whether the district court lacks subject matter jurisdiction over a suit against the United States to adjudicate disputed title to real property in which the United States claims an interest, when the United States has waived or disclaimed any interest in the subject (disputed) property prior to the actual commencement of the trial pursuant to section 2409a of the Quiet Title Act, 28 U.S.C.A. § 2409a;

2. Whether the district court has any discretion to refuse to confirm a valid disclaimer filed by the United States pursuant to section 2409a(e) of the Quiet Title Act, 28 U.S.C.A. § 2409a(e);

Assuming, *arguendo*, that the court has jurisdiction over the matter:

3. When the United States steps down from its position of sovereignty and enters into a contract with private individuals, whether the Quiet Title Act, 28 U.S.C.A. § 2409a, can shield the government from the same state laws that govern contracts between private citizens.[1]

4. Whether the application of "federal principles" and the common law of New Jersey, Massachusetts and Oregon to a civil law property dispute arising solely within the State of Louisiana and governed exclusively by the Louisiana Civil Code is in direct conflict with the United States Supreme Court decision in United States v. Winstar, 518 U.S. 839, the Erie Doctrine, 304 U.S. 64, and the Full Faith and Credit Clause of the U.S. Constitution, U.S. Const. art. IV, § 1.

---

[1]United States v. Winstar, 518 U.S. 839 (1996); Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938).

5. In interpreting the laws of the state of Louisiana, whether a federal court must step into the role of Louisiana judges who are called upon to think and act as civil-law jurists when deciding cases under the Louisiana Civil Code, and not as judges in the Anglo-American tradition who are more often engaged in the interpretation and application of law derived from common law principles and sources outside the ambit of the civil code. Hulin v. Fibreboard Corp., 178 F.3d 316, 319, 328 (5th Cir. 1999).

6. Whether an express reverter clause was necessary in order for a donation of a servitude to the United States to terminate and revert back to the donor when the government ceased to use the servitude for the purposes for which it was granted.

PARTIES TO THE PROCEEDING

Petitioners

Ronald Richard, Septime Richard, Jr., Richard Family Trust and/or Teresa C. Richard, as Trustee for the Richard Family Trust, Malcolm G. Barlow, Sr., Virginia B. Nolan, Nancy Blanchard Beard, Alice B. Melanson, Louise B. Charitat, Pauline B. Clause, Celeste B. Dawson, Mary Alice Gomez Brown, Lula Mae M. Caldwell, Marguerite G. Couvillion, Estelle B. Hull, Roy Edwin Barlow, Michael C. Barlow, Leonard J. Gilbert, Jr., Joseph B. Blanchard, Henry L. Blanchard Estate, Corrine O. Randazzo, Virgie Lee Alexander, Marie B. Poche, Estelle B. Malagarie, Barry A. Gomez, Wilbert A. Gomez, Jr., Lillian N. Harelson, Electa G. Barlow, Blanche D. Gilbert, Joseph V. Gilbert, Sr., Janet Blanchard Beatrix, Richard A. Gomez, Wayne A. Gomez, Christine Weatherford, Phyllis B. Mock, Dixie Mae G. Suffrin, Anita Weaver, Lenes J. Gomez, Clarence L. Barlow, Jr., Dixie Gomez Culotta, Ramona G. Perrin, Patricia B. Walker, Stan Warburton, Jennifer Lynn Caves, Wilfred J. Noel, Jr., Hazel Ann B. Andrews, Betty Marie G. Hopkins, Lewis J. Gomez, Lillie Marie G. Berthelot, Delores N. Lejeune, Jacqueline B. Breaux, Monica Ann Falcon, Wilfred Roger Falcon, Eddie J. Callegan, Jr., Shasta G. Isbell, Robert A. Gomez, Wilbert A. Gomez, Jr., Gwynne G. Hornbuckle, Tommy A. Gomez, Marion C. Miles, Randall A. Gomez, Gloria Ann G. Clebert, Todd A. Gomez, Gloria Lynn Gomez, and Shirley Gomez Moon.

Respondents

United States of America and Louisiana Intrastate Gas Company, L.L.C.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

PARTIES TO THE PROCEEDING iii

OPINIONS AND ORDERS REPORTED 1

JURISDICTIONAL BASIS 1

CONSTITUTIONAL PROVISIONS AND STATUTES PRIMARILY RELIED UPON 2

STATEMENT OF THE CASE 4

SUMMARY OF ARGUMENT 6

ARGUMENT 8

I. Grounds for Granting Writ of Certiorari 8

II. The District Court Lacked Jurisdiction over Petitioners' QTA Claim Because the United States Disclaimed All Interest in the Subject Property. 9

A. The Quiet Title Act 9

B. The Disclaimer 11

C. General Principles of Jurisdiction are not Applicable to the QTA 11

D. The Court Has No Discretion to Refuse Confirmation of a Disclaimer 13

E. The Fifth Circuit's Reliance on *Delta Savings* and *Bank of Hemet* was Misplaced 14

III. The QTA Cannot Shield the United States from Louisiana Civil Code Which Supplies the Applicable Rule of Law. 15

IV. The Fifth Circuit's Failure to Apply the Louisiana Civil Code Violates *Winstar*, the Erie Doctrine, the Full Faith and Credit Clause of the U.S. 19

A. The Common Law of New Jersey, Massachusetts and Oregon Have Nothing in Common With The Louisiana Civil Code . 20

B. When a Donor Has Imposed Conditions Upon The Donee There Is No Necessity For an Express Stipulation of a Reverter Clause . 22

C. The Donation Was Made for the Express Purpose of Constructing, Operating and Maintaining an SPRP Oil Pipeline 25

D. Impossibility of Use: Decommissioning the Pipeline Extinguished the Servitude 28

CONCLUSION 30

TABLE OF AUTHORITIES

Page

CASES

Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 426 (1964) 18

Bank of Hemet v. United States, 643 F.2d 661 (9th Cir.1981) 11, 14, 15

Bank One of Texas v. United States, 157 F.3d 397, 403 (5th Cir. 998), *cert. denied*, 119 S.Ct. 1761 (1989) 16

Bily v. Illinois Central Gulf Railroad Co., 637 F. Supp. 127 (N.D. Ill. 1986) 8

Block v. North Dakota, 461 U.S. 273 (1983) 8, 9, 10

Board of Trustees of Columbia Road Methodist Episcopal Church of Bogalusa v. Richardson,44 So.2d 321 (1949) 22

Board of Trustees of Ruston Circuit v. Rudy, 187 So.2d 549 (La. 1939) 22

Cascio v. DePaula, 27 So.2d 453 (La. App. 1st Cir. 1946) 29

Clearfield Trust Co. v. United States, 318 U.S. 363 (1943) 16

Cooke v. United States, 91 U.S. 389 (1875) 16

Dautreuil v. Degeyter, 436 So.2d 614 (La. App. 3d Cir. 1983) 26

Delta Savings & Loan v. IRS, 847 F.2d 248
(5th Cir. 1988) 11, 14, 15

Erie Railroad Co., v. Tompkins, 304 U.S. 64
(1938) 9, 16, 17

Gardner v. Stager, 103 F.3d 886, 887 (9th Cir. 1996) 12

Guzzetta v. Pipeline Co., 485 So.2d 508 (La. 1986) .. 20, 30

Heirs of Primeaux v. Erath Sugar Company, 484 So.2d 717
(La. Ct. App. 1986) 22, 24

Hulin v. Fibreboard Corp., 178 F.3d 316, 319, 328
(5th Cir. 1999) 18, 24

Jackson v. Johns-Manville Sales Corp., 781 F.2d 394
(5th Cir.) (en banc), *cert. denied*, 478 U.S. 1022 .. 18

Lee v. United States, 629 F. Supp. 721
(D. Alaska 1986) 8, 13

Lehman v. Nakshian, 453 U.S. 156, 161 (1981) 12

Leisnoi v. United States, 170 F.3d 1188
(9th Cir. 1999) 8, 13

Leison, Inc. v. United States, 170 F.3d 1188
(9th Cir. 1999) 8

Lethin v United States, 583 F.Supp 863 (D.Or. 1984) . 20, 21

Lynch v. United States, 292 U.S. 571 (1934) 16

Madden v. Internal Revenue Service, 850 F. Supp. 148 (N.D.N.Y. 1994) 8, 13

McGuffy v. Weil, 125 So.2d 154 (1960) 22, 26

Ogden v. Police Jury of Concordia Parish, 28 F.Supp. 402 (W.B. La. 1939) 22

Orleans Levee Dist. v. Dept. of Natural Resources, 496 So. 2d 281 (La. 1986) 18

Orleans Parish School Bd v. Campbell, 132 So.2d 885 (1961) 20, 24

Perry v. United States, 294 U.S. 330 (1935) 16

Pugh v. United States, 418 F. Supp. 538 (E.D. Wis. 1976) 8, 13

Richmond, Fredericksburg & Potomac R. Co. v. United States, 945 F.2d at 765, 767 (4th Cir. 1991) 12

Selectmen of the Town of Nahant v. United States, 293 F.Supp. 1076 (D.Mass. 1968) 20

Simmons v. Bossier Levee District, 624 So.2d 935 (La. App. 2d Cir. 1993) at 953 26

State et rel. Lisso v. Police Jury of Red River Parish, 116 La 767, 41 So. 85, 86 (1906) 18

Texas Industries, Inc., v. Radcliff Materials, Inc., 451 U.S. 630, 640 (1981) 17

Tournillon v. Sewerage & Water Bd. of New Orleans, 96-1457 (La. App. 4th Cir. 2/12/97) 689 So.2d 655 .. 26

United States Trust Co. v. New Jersey, 543 A.2d 457 (D.N.J. 1988) 20, 21

United States v. Baggerly, 524 U.S. 38 (1998) 12, 14

United States v. Bostwick, 94 U.S. 53 (1876) 16

United States v. National Exchange Bk. of Baltimore, MD, 270 U.S. 527 (1926) 16

United States v. Standard Oil Co., 332 U.S. 301, 308 (1947) 17

United States v. Winstar, 518 U.S. 839 (1996) 9, 16

Wheeldin v. Wheeler, 373 U.S. 647, 653 (1963) 17

STATUTES

28 U.S.C.A. § 1254 2

28 U.S.C.A. § 1291 1

28 U.S.C.A. § 1346 ..... 1, 2

28 U.S.C.A. § 1346(f) 10

28 U.S.C.A. § 2409a 2, 5, 6, 7, 8, 14, 15

42 U.S.C.A. §6201 4

Louisiana Civil Code Annotated article 1 19

Louisiana Civil Code Annotated article 1767. 21

Louisiana Civil Code Annotated article 493. ..... 29, 30

Louisiana Civil Code Annotated article 697 26

Louisiana Civil Code Annotated article 773 ..... 20, 21

Louisiana Civil Code article 1523 ..... 3, 24

Louisiana Civil Code article 1559 ..... 3, 20, 21, 27

Louisiana Civil Code article 3418 ..... 4, 29

Louisiana Civil Code article 493 4

Louisiana Civil Code article 645 3

Louisiana Civil Code article 730 ..... 3, 22, 27, 28

Louisiana Civil Code article 749 ..... 3, 27

Louisiana Civil Code article 751 4

U.S. Const. art. IV, § 1 ..... 3, 9, 16

OTHER

Yiannopoulas, Extinction of Predial Servitudes, 56
Tul.L.Rev. 1288 (1982) 13, 26, 28

OPINIONS AND ORDERS REPORTED

Lafargue. v. United States, 4 F. Supp. 2d 580 (E.D. La. 1998), *aff'd*, 193 F.3d 516 (5th Cir. 1999), *reh'g denied* (October 13, 1999). (The Fifth Circuit opinions were not released for publication.)

JURISDICTIONAL BASIS

Pursuant to Supreme Court Rule 14(e), petitioners state that jurisdiction lies in this Court by virtue of the following:

I. Date Judgment or Order Sought to be Reviewed was Entered

On July 31, 1997, the petitioners filed a class action complaint against the United States of America and Louisiana Intrastate Gas Company pursuant to the Quiet Title Act, 28 U.S.C.A. § 2409a, seeking to quiet title a servitude petitioners donated to the United States. The complaint alleged jurisdiction pursuant to 28 U.S.C.A. § 1346(f). On May 27, 1998, the district court granted the defendants' motion for summary judgment holding that "the Government has maintained ownership of the servitudes and the Pipeline continuously since 1979." 4 F. Supp. 2d 580 (E.D. La. 1998), *aff'd* 193 F.3d 516 (5th Cir.); *reh'g denied* (October 13, 1999). Petitioners appealed the summary judgment, pursuant to 28 U.S.C.A. § 1291, which was affirmed on August 16, 1999, by the United States Court of Appeals for the Fifth Circuit. *See*, Appendix A.

II. Date of Orders Respecting Rehearing

A petition for rehearing and rehearing *en banc* was filed by petitioners and subsequently denied by the Fifth Circuit on October 13, 1999. *See*, Appendix C.

III. Petitioners do not rely on Rule 12.5.

IV. Statutory Provisions Believed to Confer on this Court Jurisdiction to Review on a Writ of Certiorari the Judgment or Order in Question

This Court has jurisdiction to review the judgment and orders in question pursuant to 28 U.S.C.A. § 1254, which states, "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree[.]"

V. This provision is not applicable to this proceeding.

CONSTITUTIONAL PROVISIONS AND STATUTES PRIMARILY RELIED UPON

1. **28 U.S.C.A. § 1346 - United States as Defendant.**

   . . . The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States.

2. **28 U.S.C.A. § 2409a - Real Property Quiet Title Actions.** (a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights.

3. **28 U.S.C.A. § 2409a(e) - Disclaimer.** . . . If the United States disclaims all interest in the real property or interest therein adverse to the Plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the

civil action or suit on ground other than and independent of the authority conferred by section 1346(f) of this title.

4. **U.S. Const. art. IV, § 1 - Full Faith and Credit.**

   Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

5. **Louisiana Civil Code article 1523 - Gratuitous, Onerous and Remunerative Donations; Definitions.** There are three kinds of donations *inter vivos*: . . . The onerous donation, or that which is burdened with charges imposed on the donee

6. **Louisiana Civil Code article 1559 - Causes for Revocation or Dissolution.** [Donations] *inter vivos* are liable to be revoked or dissolved on account of . . . the non-performance of the conditions imposed on the donee

7. **Louisiana Civil Code article 645 - Regulation of Servitude.** A right of use is regulated by application of the rules governing usufruct and predial servitudes to the extent that their application is compatible with the rules governing a right of use servitude.

8. **Louisiana Civil Code article 749 - Extent and Manner of Use of Servitude When Title is Silent.** If the title is silent as to the extent and manner of use of the servitude, the intention of the parties is to be determined in the light of its purpose.

9. **Louisiana Civil Code article 730 - Interpretation of Servitude.** Doubt as to the existence, extent, or manner of exercise of a predial servitude shall be resolved in favor of the servient estate.

10. **Louisiana Civil Code article 751**. A predial servitude is extinguished by the permanent and total destruction of the dominant estate...

11. **Louisiana Civil Code article 3418 - Abandoned Things**. One who takes possession of an abandoned thing with the intent to own it acquires ownership by occupancy. A thing is abandoned when its owner relinquishes possession with the intent to give up ownership.

12. **Louisiana Civil Code article 493 - Ownership of Improvements**. . . . When the owner of buildings, other constructions permanently attached to the ground, or plantings no longer has the right to keep them on the land of another, he may remove them subject to his obligation to restore the property to its former condition. If he does not remove them within 90 days after written demand, the owner of the land acquires ownership of the improvements and owes nothing to their former owner.

STATEMENT OF THE CASE

I. Factual Background

In 1975, in response to artificial oil shortages created by the Organization of Petroleum Exporting Countries (OPEC), Congress enacted the Energy Policy and Conservation Act ("EPCA")[1] for the purpose, among other things, of creating a Strategic Petroleum Reserve Program("SPRP"). The SPRP was intended to serve as a reserve of up to one billion barrels of petroleum products to reduce the impact of energy supply interruptions or reductions in imports of crude oil and refined petroleum products.

---

[1]42 U.S.C.A. §6201, et seq.

Pursuant to its authority under EPCA, the government accepted numerous servitudes donated by petitioners and other patriotic landowners in Louisiana for the express purpose of constructing, operating and maintaining a 67-mile, 36-inch pipeline, to run between SPRP storage facilities at Weeks Island, Louisiana, and a terminal in St. James Parish. The donations were made with the express purpose of allowing the government to construct, operate and maintain a pipeline for the transportation and storage of oil in connection with the SPRP. *See*, Appendix E.

In 1994, when it was determined that the Weeks Island storage facility was geophysically unstable for the storage of natural oil, the government decided to decommission the facility and sell the pipeline to the Louisiana Intrastate Gas Company ("LIG"). *See*, Appendix D. Before suit was filed, LIG agreed to purchase the pipeline and convert it for the transportation of natural gas for profit. It is undisputed that the pipeline would no longer be used for the SPRP. Petitioners contend that, when the government ceased to use the donation for the purpose for which it was donated, petitioners had the right under the terms of the servitude and the Louisiana Civil Code to claim revocation of the servitude and the pipeline.

II. Course of Proceedings and Disposition in the Court Below

Petitioners filed suit on July 31, 1997, under the Quiet Title Act, 28 U.S.C.A. § 2409a, ("QTA") against the United States and LIG seeking a judicial declaration that the rights-of-way (servitude) they granted to the United States for pipeline use in the 1970s had expired or terminated, and that ownership of the servitude and pipeline had reverted back to the donors/petitioners. On August 22, 1997, the government executed a quitclaim in favor of LIG pursuant to an agreement to sell that was executed prior to the filing of the complaint.

On November 19, 1998, after suit was filed , and before the actual commencement of trial, the United States filed a declaration disclaiming all interest in the subject property. Although the district court declined to confirm the disclaimer, on May 27, 1998, the district court granted summary judgment in favor of the government dismissing petitioners' complaint, holding that the government had maintained ownership of the servitude and pipeline continuously since 1979. Petitioners appealed to the U.S. Court of Appeals for the Fifth Circuit. (*See*, Appendix A.) The dismissal was affirmed by the Fifth Circuit. A petition for rehearing and rehearing *en banc* was timely filed but was denied by the Fifth Circuit on October 13, 1999, with written reasons. (*See*, Appendix C.)

SUMMARY OF ARGUMENT

The district court lacked jurisdiction under the QTA because the United States disclaimed all interest in the rights-of-way that had been granted by the petitioners in the donation. By its express terms, the QTA provides that federal jurisdiction shall cease "[i]f the United States disclaims all interest in the real property or interest therein adverse to plaintiffs at any time prior to the actual commencement of the trial." 28 U.S.C.A. § 2409a(e).

Here, the United States disclaimed all such interest prior to the commencement of the trial when it filed a formal disclaimer with the district court. The district court improperly held that confirmation under the QTA was discretionary and, since the court believed that the disclaimer was in bad faith, it declined to confirm the disclaimer. On appeal, the Fifth Circuit rejected the district court's finding of bad faith[2] but nevertheless held

---

[2]*See*, Appendix A at A-4. In the district court, petitioners contended that the disclaimer was in bad faith. Petitioners do not

that confirmation was discretionary. The Fifth Circuit then concluded that, despite the express language of section 2409a(e) of the QTA, which allows the government to disclaim and divest the court of jurisdiction at any time prior to the commencement of trial, the disclaimer would nevertheless be governed by the general principle that jurisdiction should be determined on the facts as they existed when the complaint was filed. Id. at 4. Having concluded that the court had subject matter jurisdiction, the Fifth Circuit went on to apply federal and common law principles to a civil law property dispute controlled exclusively by the Louisiana Civil Code and held that an express reversionary clause was necessary for the pipeline and servitude to revert back to the petitioners.

It is the contention of petitioners that the government's disclaimer divested the district court of its subject matter jurisdiction and the district court had no discretion to refuse to confirm the disclaimer by the United States pursuant to section 2409a(e) of the QTA. Even if the court somehow retained jurisdiction, when the United States steps down from its position of sovereignty and enters into a contract with private Louisiana citizens, the QTA cannot shield the government from the Louisiana Civil Code that governs the donations and servitudes involved in this matter. The Louisiana Civil Code, unlike the common law, vests in the donor the right to claim a revocation of a servitude donated to the United States when the government ceases using the servitude for the purpose for which the donation was made, without the necessity of an express reversionary clause.

---

challenge the Fifth Circuit's finding that the disclaimer was valid and made in good faith. Rather, it is the contention of petitioners that a valid and good faith disclaimer divested the court of jurisdiction.

ARGUMENT

I. Grounds for Granting Writ of Certiorari

A. The decision by the United States Court of Appeals for the Fifth Circuit in the underlying case is contrary to the express language of section 2409a(e) of the QTA and every district and federal appellate court that has construed section 2409a(e). In particular, the Fifth Circuit's application of the general principle that jurisdiction should be determined on the facts as they existed when the complaint was filed is contrary to the express language of section 2409a(e), which provides that the jurisdiction of the district court ceases upon the filing of a disclaimer at any time prior to the commencement of trial. The Fifth Circuit's application of this general principle of jurisdiction in an action under the QTA is not only contrary to the express language of the QTA but is contrary to every case construing section 2409a(e). *See*, Lee v. United States, 629 F. Supp. 721 (D. Alaska 1986); Madden v. Internal Revenue Service, 850 F. Supp. 148 (N.D.N.Y. 1994); Pugh v. United States, 418 F. Supp. 538 (E.D. Wis. 1976); Leison, Inc. v. United States, 170 F.3d 1188 (9th Cir. 1999); Bily v. Illinois Central Gulf Railroad Co., 637 F. Supp. 127 (N.D. Ill. 1986).

B. The decision by the U.S. Court of Appeals for the Fifth Circuit that confirmation of a disclaimer is discretionary and not ministerial is not only contrary to section 2409a of the QTA (hereinafter referred to as "Section 2409a") but also contrary to the decisions of all federal courts that have construed the confirmation provisions of Section 2409a(e). *See*, Madden, 850 F. Supp. 148; Pugh, 418 F. Supp. 538; Lee, 629 F. Supp. 721; Block v. North Dakota, 461 U.S. 273 (1983); Leisnoi v. United States, 170 F.3d 1188 (9th Cir. 1999).

C. The U.S. Court of Appeals for the Fifth Circuit's interpretation of the QTA as a basis for applying federal "common law" principles to a state civil law property dispute controlled exclusively by the Louisiana Civil Code is in direct conflict with the U.S. Supreme Court's decision in United States v. Winstar, 518 U.S. 839 (1996), the Erie Doctrine, 304 U.S. 64, and the Full Faith and Credit Clause of the U. S. Constitution, U.S. Const. art. IV, § 1, and is so far departed from the accepted and usual course of judicial proceedings that it calls for this Court's supervisory power.

D. The Fifth Circuit's failure to apply the Louisiana Civil Code to a civil law property dispute under the QTA violates the Louisiana Constitution and the Full Faith and Credit Clause of the U.S. Constitution, U.S. Const. art. IV § 1. When applying Louisiana law, the Louisiana Civil Code provides the only applicable substantive law. In Louisiana, jurisprudence is not substantive law, but rather, interpretation of the Louisiana Civil Code.

II. The District Court Lacked Jurisdiction over Petitioners' QTA Claim Because the United States Disclaimed All Interest in the Subject Property.

A. The Quiet Title Act. It is axiomatic that the United States may not be sued without the consent of Congress, and the conditions Congress places on a waiver of federal sovereign immunity must be strictly construed. *See*, Block, 461 U.S. 273 at 287. In the instant case, petitioners filed suit against the United States and LIG seeking quiet title to a servitude donated to the government for the express purpose of constructing, operating and maintaining a pipeline to transport and store oil for the SPRP. Suit was filed against the United States pursuant to the QTA, which provides that "[t]he United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the

United States claims an interest[.]" 28 U.S.C.A. § 2409a. The QTA is the "exclusive means by which adverse claimants [may] challenge the United States' title to real property." Block, 461 U.S. 273 at 286[3] and operates as a waiver of the sovereign immunity of the United States.

The QTA also confers jurisdiction on a federal district court to hear an action "to quiet title to an estate or interest in real property in which an interest is claimed by the United States." 28 U.S.C.A. § 1346(a). By its terms, the waiver of sovereign immunity and the jurisdiction conferred on the district court in the QTA are conditioned on the existence of a present claim of interest by the United States in the real property at issue. When the government's interest in the property is extinguished or terminated, the waiver of sovereign immunity and the jurisdiction of the court cease to exist under Section 2409a(e), which provides:

> If the United States disclaims all interest in the real property or interest therein adverse to the Plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease . . .

28 U.S.C.A. § 2409a(e).

When the United States has disclaimed all right, title, or interest in the real property "prior to the actual commencement of the trial," as is the case here, the federal district court's jurisdiction over the QTA claim ceases. Id.

---

[3]The United States district courts have exclusive original jurisdiction over QTA claims. 28 U.S.C.A. § 1346(f).

B. The Disclaimer. In the instant case, before suit was filed, the United States had agreed to execute a quitclaim deed in favor of LIG. *See*, Appendix A at A-15. On August 22, 1997, after suit was filed and pursuant to the agreement to sell its interest to LIG that was entered in to before suit was filed, the United States sold and conveyed to LIG "as is" and "where is" under a quitclaim deed, all title, right, and interest the government had in the pipeline and the accompanying rights-of-way for a total sum of $22 million. *See*, Appendix A at A-3. Thereafter, on or about November 19, 1998, the United States filed a declaration with the district court in which it formally disclaimed any interest in the property at issue. Id. The record before the district and appellate court, clearly established that the United States had affirmatively disclaimed all interests in the pipeline and the rights-of-way. The QTA's limited waiver of sovereign immunity accordingly was not applicable, and the district court should have entered an order of confirmation and dismissed the lawsuit for lack of subject matter jurisdiction.

C. General Principles of Jurisdiction are not Applicable to the QTA. When the United States filed a formal disclaimer, the district court refused to confirm the disclaimer, finding the government's actions disingenuous. On appeal, the Fifth Circuit rejected the district court's finding of bad faith and "accepted the government's contention that the sale of the pipeline was not in response to the suit." Appendix A at a-4. However, despite finding a good faith disclaimer by the government and the clear mandate of Section 2409a(e), the court erroneously held that it, nevertheless, had jurisdiction over the quiet title action on the grounds that jurisdiction should be determined on the facts as they existed at the time the complaint was filed. Id. *citing* Delta Savings & Loan v. IRS, 847 F.2d 248 (5th Cir. 1988), and Bank of Hemet v. United States, 643 F.2d 661 (9th Cir. 1981).

Under Section 2409a(e), the government may divest the court of jurisdiction by filing a disclaimer at any time prior to the actual commencement of the trial. A plain reading of the QTA statute provides an exception to the general rule for determining a court's jurisdiction. Clearly the QTA provides the government with a vehicle to re-assert its immunity once the government has filed a disclaimer and abandoned or voluntarily waived any interest in the property, which is the subject of the quiet title action. Once the government's immunity is reinstated, the court can no longer maintain jurisdiction over a sovereign or the claim unless there is some other independent basis to establish jurisdiction which does not exist here. The conditions placed by Congress on the waiver granted by the QTA are jurisdictional prerequisites which are "to be construed narrowly in favor of the government." Richmond, Fredericksburg & Potomac R. Co. v. United States, 945 F.2d at 765, 767 (4th Cir. 1991). The QTA's waiver of sovereign immunity, "must be strictly observed and exceptions thereto are not to be implied." Lehman v. Nakshian, 453 U.S. 156, 161 (1981). The QTA clearly provides the court with no discretion to reject a disclaimer on any grounds and is clearly an exception to the general rule for determining jurisdiction. *See*, United States v. Baggerly, 524 U.S. 38 (1998).

The Fifth Circuit's contrary reading of Section 2409a(e) expands the QTA's waiver of sovereign immunity in conflict with the rules governing waivers of sovereign immunity. It erroneously precludes the United States from disclaiming any interest in property after a complaint is filed, even though section 2409a(e) expressly permits a disclaimer to be filed "at any time prior to the actual commencement of trial." Gardner v. Stager, 103 F.3d 886, 887 (9th Cir. 1996).

D. The Court Has No Discretion to Refuse Confirmation of a Disclaimer. In failing to confirm the government's disclaimer, the Fifth Circuit found that "the language of the disclaimer provision manifests congressional intent to provide the court with some flexibility in applying the provision." *See*, Appendix A at A-3. The Fifth Circuit's interpretation of the language of the disclaimer provision of the QTA was error. The Fifth Circuit does not cite, and petitioners have found no authority to support, the lower court's contention that Congress intended there to be any flexibility by the courts in their obligation to confirm valid disclaimers filed under the QTA. On the contrary, the Fifth Circuit is the only court to conclude that confirmation of a disclaimer is discretionary rather than a ministerial act.[4]

In Lee, 629 F.Supp. 721, following a conveyance of disputed land, the government filed a disclaimer of all interest in the lands and the court found, "There is no question that its [the government's] disclaimer is valid . . . Therefore, this court must confirm the disclaimer . . . since no trial has yet commenced in this action, under the terms of section 2409a(d), this court's jurisdiction must cease." Id. at 726. Similarly, in Pugh, 418 F. Supp. 538, the government sold property by quitclaim deed, followed by filing a disclaimer, the court held that confirmation of the disclaimer was "a formality and one which this court should not deny," thereby divesting the court of jurisdiction." Id.[5]

---

[4]*But see*, Leisnoi, 170 F.3d 1188 at 1191. The district court refused to confirm the governments disclaimer which was filed contemporaneously with the governments answer, on the grounds that the "court lacked initial subject matter jurisdiction."

[5]*See also*, Madden, 850 F.Supp. 148 at 151. "Confirmation of a disclaimer filed by the United States is deemed a formality and

Section 2409a(e) expressly provides that federal jurisdiction under the QTA ceases when the United States disclaims its interest in property, and the disclaimer "is confirmed by order of the court." 28 U.S.C.A. § 2409a(e). The district court's role in this context is to formalize, by court order, the disclaimer filed by the United States so that the disclaimer may be relied upon by others. The statute provides the district court with no discretion to reject a valid disclaimer on any grounds. *See, e.g.,* Baggerly, 524 U.S. 38 (equitable tolling is incompatible with the terms of the QTA). As there was no other jurisdictional basis for the QTA claims, the district court should have confirmed the disclaimer and dismissed the QTA claims for lack of subject matter jurisdiction. As the dissent in the Fifth Circuit's opinion correctly noted, "we must conceptualize confirmation as a ministerial function and not a discretionary function of the district court." Appendix A at A-16.

E. The Fifth Circuit's Reliance on *Delta Savings* and *Bank of Hemet* was Misplaced. The district court and the Fifth Circuit's reliance on Delta Savings, 847 F.2d 248, and Bank of Hemet, 643 F.2d 661, was misplaced because those cases are clearly distinguishable. In both Delta Savings and Bank of Hemet, the IRS held a lien on the property at issue and the claims to quiet title arose from attempts to resolve competing liens on the subject property. Section 2409a , however, provides that the United States may be named as a party in an action to adjudicate "disputed title to real property in which the United States claims an interest, other than a security interest or water rights." 28 U.S.C.A. § 2409a(e). Since the interests claimed by the IRS prior to sale of the

---

one which this court should not deny." As such, this court's jurisdiction ceased at this point.

property were security interests, Section 2409a(e) was not applicable.

In addition, even if federal jurisdiction had existed under Section 2409a, both Delta Savings and Bank of Hemet are distinguishable from the present case because those cases did not involve a formal disclaimer of governmental interest under Section 2409a(e). Instead, in both Delta Savings and Bank of Hemet, the government argued that the district court never had jurisdiction in the first instance under Section 2409a(e) because the government had sold the property at issue before being served with the complaint.[6] The absence of a formal governmental disclaimer in both Delta Savings and Bank of Hemet meant that the courts in those cases did not address the application of Section 2409a(e). Accordingly, the opinion of the Fifth Circuit should be vacated and the case remanded to the district court to confirm the disclaimer in accordance with the QTA.

III. The QTA Cannot Shield the United States from Louisiana Civil Code Which Supplies the Applicable Rule of Law.

In the instant case, petitioners contend that the servitude they donated to the United States for the construction, operation and maintenance of a pipeline to transport and store oil in connection with the SPRP terminated and reverted back to the petitioners when the government ceased using the pipeline for SPRP and sold it to LIG for the transportation of natural gas for profit. The Fifth Circuit erroneously rejected petitioners' contention and held that an express reversionary

---

[6]As noted, the government might have also argued that jurisdiction was improper because Section 2409a does not apply when the interest originally claimed by the United States is a security interest. *See*, 28 U.S.C.A. § 2409a.

clause was necessary for the servitude to terminate and revert back to the donors when the government stopped using the pipeline for the purpose for which it was granted.

In reaching its decision, the Fifth Circuit concluded that the QTA required the application of both federal and common law principles to a civil law property dispute arising exclusively within the state of Louisiana.[7] The Fifth Circuit's reasoning and holding is in direct conflict with the Louisiana Civil Code and the Supreme Court's holding in Winstar, 518 U.S. 839, the Erie Doctrine, 304 U.S. 64, and the Full Faith and Credit Clause of the U. S. Constitution, U.S. Const. art. IV, § 1, and should be reversed.

When the United States steps down from its position of sovereignty and enters into a contract with private individuals, the QTA cannot shield the government from the same state laws that govern contracts between private citizens. Id. According to the U.S. Supreme Court in Winstar, the United States is to be treated as any other private party in contractual dealings, and therefore its interests in contracts which it enters into are subject to state law just as any private party's interests are.[8]

---

[7]*See*, Appendix A at A-7, citing Bank One of Texas v. United States, 157 F.3d 397, 403 (5th Cir. 1998), *cert. denied*, 119 S.Ct. 1761 (1989).

[8]Id. *See also*, Cooke v. United States, 91 U.S. 389 (1875); United States v. Bostwick, 94 U.S. 53 (1876); Lynch v. United States, 292 U.S. 571 (1934); Perry v. United States, 294 U.S. 330 (1935); Clearfield Trust Co. v. United States, 318 U.S. 363 (1943); United States v. National Exchange Bk. of Baltimore, MD, 270 U.S. 527 (1926).

In Erie Railroad Co., v. Tompkins, 304 U.S. 64 (1938), the Supreme Court announced the governing principle that was to become the heart of the Erie Doctrine:

> Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a state whether they be local in their nature or "general," be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts.

Id. at 78.

Nevertheless, in limited areas, the court has recognized the authority to formulate what has come to be known as "federal common law." *See*, United States v. Standard Oil Co., 332 U.S. 301, 308 (1947); Texas Industries, Inc., v. Radcliff Materials, Inc., 451 U.S. 630, 640 (1981). However, the instances are "few and restricted and fall into two categories: those in which a federal rule of decision is 'necessary to protect uniquely federal interests,' and those in which Congress has given the courts the power to develop substantive law." Id. at 640-41. *See also,* Wheeldin v. Wheeler, 373 U.S. 647, 653 (1963). "The vesting of jurisdiction in the federal courts does not in and of itself give rise to authority to formulate federal common law." Texas Industries, 451 U.S. 630 at 640-41.

The QTA contains no pronouncement by Congress authorizing the courts to develop substantive law nor is there a

"uniquely federal interest," Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 426 (1964), in this action to quiet title to disputed property in the State of Louisiana. On the contrary, the State of Louisiana has an overriding interest in the disposition of property located solely within its borders. Therefore, the civil law of Louisiana should have been employed in resolving the disputed title, and not federal common law as applied by the lower courts.

When the underlying substantive rule involved is based on state law, the federal court must due what it thinks the state's highest court would deem best and not what the federal court thinks best. *See,* Jackson v. Johns-Manville Sales Corp., 781 F.2d 394 (5th Cir.) (en banc), *cert. denied*, 478 U.S. 1022. In interpreting the laws of the State of Louisiana, a federal court must step into the role of Louisiana judges who are called upon to think and act as civil-law jurists when deciding cases under the Louisiana Civil Code, and not as judges in the Anglo-American tradition who are more often engaged in the interpretation and application of law derived from common law principles and sources outside the ambit of the civil code. *See,* Hulin, 178 F.3d 316 at 319, 328.

Under Louisiana's Constitution and the Louisiana Civil Code, the power to make substantive laws is vested exclusively in the legislature. Louisiana courts cannot make law but are bound to decide cases according to their best understanding of the law established by legislation and custom.[9] Under the

---

[9]*See*, Orleans Levee Dist. v. Dept. of Natural Resources, 496 So. 2d 281 (La. 1986) at 286; cf. State et rel. Lisso v. Police Jury of Red River Parish, 116 La 767, 41 So. 85, 86 (1906) ("[It is not, and cannot, reasonably, be asserted, that the judiciary department is vested with the slightest shadow of authority in the matter of making laws; its sole function being to interpret the laws, as made[.]") Id.

Louisiana Civil Code, legislation and custom are the only authoritative sources of law.[10] Jurisprudence, doctrine, conventional usages, and equity are merely persuasive sources of law. In the instant case, the applicable Louisiana Civil Code articles governing donations and servitudes and the cases construing them, clearly mandate that the servitude donated to the United States for the establishment of the SPRP terminated and reverted back to the petitioners when the government stopped using the pipeline for the SPRP.

IV. The Fifth Circuit's Failure to Apply the Louisiana Civil Code Violates *Winstar*, the Erie Doctrine, the Full Faith and Credit Clause of the U.S. Constitution.

The Fifth Circuit held that petitioners' donation must include an express provision for termination or revocation if it was to terminate and revert back to the donors upon a change in use of the pipeline from the establishment of the SPRP to the commercial transportation of natural gas by LIG. In reaching its conclusion, the Fifth Circuit erroneously relied on federal principles and the common law of New Jersey, Massachusetts and Oregon to resolve a civil law property dispute arising solely within the State of Louisiana.

Although petitioners' donation enumerates four causes for termination, those causes are not exclusive. Indeed, the petitioners' donation states that "the causes for termination of this easement shall include but not be limited to the following: (a) abandonment, (b) removal of the pipeline, (c) ten years non-use, or (d) execution of an affidavit stating that the pipeline has been abandoned." In addition to the causes of termination listed above, the Louisiana Civil Code provides several other means of extinguishing a donation or servitude. According to

---

[10]La. Civ. Code Ann. art. 1 (West 1999).

traditional civilian law concepts, a donation of servitude is extinguished: 1) when it can no longer be used for the purpose for which it was donated;[11] 2) upon the happening of a resolutory condition;[12] or 3) the impossibility of use.[13] However, the Fifth Circuit ignored the Louisiana Civil Code and relied on the common law of New Jersey, Massachusetts and Oregon to support its decision.

A. The Common Law of New Jersey, Massachusetts and Oregon Have Nothing in Common With The Louisiana Civil Code. The Panel Opinion relied on three cases from New Jersey, Massachusetts and Oregon.[14] In those cases, property interests were conveyed to the United States for the express purpose of establishing life-saving stations.[15] In all three cases, the court rejected the petitioners' claims that the conveyances terminated and the property reverted to the grantors when the purpose or use for the conveyances changed. The Panel agreed with the common law court's reasoning in each of the three cases stating:

---

[11]La. Civ. Code Ann. art. 1559 (West 1999); Orleans Parish School Bd v. Campbell, 132 So.2d 885 (1961).

[12]La. Civ. Code Ann. art. 773 (West 1999); Guzzetta v. Pipeline Co., 485 So.2d 508 (La. 1986).

[13]Yiannopoulas, Extinction of Predial Servitudes, 56 Tul.L.Rev. 1288 (1982).

[14]*See*, United States Trust Co. v. New Jersey, 543 A.2d 457 (D.N.J. 1988) at 459; Lethin v United States, 583 F.Supp 863 (D.Or. 1984) at 865-66; Selectmen of the Town of Nahant v. United States, 293 F.Supp. 1076 (D.Mass. 1968) at 1077.

[15]United States Trust Co., 543 A.2d at 459; Lethin, 583 F.Supp at 865-66; Town of Nahant, 293 F.Supp. at 1077.

> In two of the cases, the courts reasoned that "[t]he mere recital in the deed of the purpose for which the land conveyed was to be used is not in itself sufficient to impose any limitation or restriction on the estate granted."[16] In the third case, the court reasoned that "[d]eed language alleged to create a determinable fee is strictly construed, to avoid a forfeiture," and declined "to construe the language of purpose contained in this deed as an expression of intent to return the property to the grantor when the purpose has been exhausted or satisfied."[17] We essentially agreement with the reasoning of these cases.[18]

While these three cases may be valid in common law jurisdiction, they are contrary to Louisiana Civil Code. For example, while the common law may require a reversionary provision to be expressly stated,[19] the Louisiana Code does not require one for donations or servitudes.[20] Furthermore, while the common law may strictly construe an instrument to avoid a forfeiture,[21] the Civil Code resolves any doubt in the

---

[16]Lethin, 583 F.Supp. at 871, *quoting* Town of Nahant, 293 F.Supp. at 1078.

[17]United States Trust Co., 543 A.2d at 462.

[18]Appendix A at A-12.

[19]Lethin, 583 F.Supp. at 871.

[20]La. Civ. Code Ann. arts. 1559, 773 and 1767 (West 1999).

[21]United States Trust Co., 543 A.2d at 459.

interpretation of a servitude agreement in favor of the landowners and against the existence of a servitude.[22]

B. When a Donor Has Imposed Conditions Upon The Donee There Is No Necessity For an Express Stipulation of a Reverter Clause. In addition to relying on common law jurisprudence, the Panel also relied on dicta in the Louisiana appellate decision in Heirs of Primeaux v. Erath Sugar Company, 484 So.2d 717 (La. Ct. App. 1986), which had effectively been overruled.

Primeaux is not a valid statement of Louisiana law as applied to these facts. The Primeaux court cited a federal district court decision from 1939 as authority for its statement that an express reversionary clause was required. *See*, Heirs of Primeaux, 484 So.2d at 721, *citing* Ogden v. Police Jury of Concordia Parish, 28 F.Supp. 402 (W.B. La. 1939). The Ogden court, in turn, relied on the Louisiana Supreme Court decision in Board of Trustees of Ruston Circuit v. Rudy, 187 So.2d 549 (La. 1939).

However, in Board of Trustees of Columbia Road Methodist Episcopal Church of Bogalusa v. Richardson,44 So.2d 321 (1949), the Louisiana Supreme Court held that the Rudy decision was an invalid statement of Louisiana law. The Richardson court stated:

> In the case of Board of Trustees of Ruston Circuit, M.E. Church, South v. Rudy . . . the Court . . . observed: "It has been held that where the donor does not place such a reservation in the act of donation, the donee is granted a complete title" and concluded that inasmuch as the act whereby Rudy donated certain

---

[22]La. Civ. Code Ann. art. 730 (West 1999); McGuffy v. Weil, 125 So.2d 154 (1960).

> property to the church did not contain such a reversionary clause, the title was completely vested in the church by the first deed and that the stipulation that it was 'to be used for religious purposes' was merely indicative of the motive for making the donation. This holding is not only at variance with our civil law, as herein above demonstrated, but it is also not supported by the authorities relied on by the author of the opinion and we will not, therefore, follow it.

Id. at 325 (emphasis added). Thus, the court held that the donees did not have the right to dispose of the property or use the property "for any other purpose than that stated in the act of donation." Id.

The Louisiana Supreme Court further dispelled any doubt as to the controlling rule of law in this case in Campbell, 132 So.2d 885. In that case, there was a donation of property to the City of New Orleans for public school purposes, but the donative act contained no express right of reversion. When the property ceased to be used for public school purposes, the heirs of the donor made formal demand for the return of the property. The court held that the conveyance was an onerous donation because the donor placed "a charge upon the donee that [the property is] to be used for public school purposes," and therefore "subject to revocation or dissolution on account of the non-performance of the conditions imposed by the donor." Id. at 888. Since the property was no longer being used for public school purposes, the heirs of the donor were entitled to have the donation revoked. Id. at 899.

The court also addressed the argument that revocation was improper because the donation did not contain an express stipulation of the right of reversion, as required by the Rudy case:

> The controlling authority in this subject is Board of Trustees of Columbia Road Methodist Episcopal Church v. Richardson, 44 So. 2d 321, 325. In that matter, which involved the revocation of a donation of land for church purposes by reason of the donee's discontinuance of the use for which the land was donated, we reconsidered our ruling in the Rudy case and refused to follow it.[23]

Finally, the Campbell court made unmistakable the applicable rule of law in these situations as follows, "When the donor has imposed charges upon the donee there is no necessity for an express stipulation of a reverter clause as the Civil Code (article 1559) vests in the donor the right to claim a revocation for failure of the donee to comply with the conditions of the gift." Campbell, 132 So.2d 885. The Louisiana Supreme Court has spoken on the issue, effectively overruling Primeaux, and therefore, reliance by the Panel on the lower court's decision was reversible error.[24]

---

[23]Id. at 890. The court noted that the only time an express reservation is required for a right of reversion is when property has been "dedicated to public use." There is no question here that a donation is at issue rather than a dedication for public use and no one has contended that the Petitioners' donation constitutes a dedication for public use. Rather, this is an onerous donation as defined by LSA--C.C. art. 1523.

[24]When a state's highest court has spoken on an issue, the lower court's decision is not controlling and therefore a federal court must rely on the pronouncement of the high court. *See,* Hulin, 178 F.3d 316 at 319.

C. The Donation Was Made for the Express Purpose of Constructing, Operating and Maintaining an SPRP Oil Pipeline. On rehearing, the Fifth Circuit attempted to distinguish Richardson and Campbell claiming that "the donation in those cases placed an express condition or charge on the donee," while the petitioners' donation did not. In reaching its conclusion, the Fifth Circuit not only ignored the relevant Louisiana Civil Code articles that govern this issue, but disregarded its original opinion that found that the petitioners' donation was made for the express purpose of constructing a pipeline for the establishment of the strategic petroleum reserve. In particular, the Fifth Circuit quoted the following provisions of the donation as evidence of its purpose:

> [W]e by this act, do donate unto the UNITED STATES a right-of-way *for the . . . operation . . . of a single pipeline in the establishment, management, and maintenance of the Strategic Petroleum Reserve* . . .
>
> * * *
>
> The aforementioned servitude is acquired by the United States *for and in connection* with the *Strategic Oil Storage* program.
>
> * * *
>
> This donation is *made and accepted for and in consideration* of Grantor's desire to aid their country in the *establishment of a Strategic Petroleum Reserve and* in further *consideration* of Grantee's agreement to construct and *operate said pipeline*.

Appendix E at 5.

Despite finding that the cause, consideration and purpose of the donation was the construction, operation and

maintenance of a pipeline for the SPRP, on rehearing the Fifth Circuit declared that there was no charge or condition placed on the donee. Such interpretation was not only inconsistent with the clear expressed language of the donation but contrary to the Louisiana Civil Code.

Generally, the use and extent of servitudes are determined by the intentions of the parties as expressed in the terms and conditions of the agreement. *See*, McGuffy, 125 So.2d 154 at 157. When the agreement is silent as to certain terms and conditions, servitudes are regulated by the provisions of the Louisiana Civil Code. *See*, La. Civ. Code Ann. art. 697 (West 1999) and comment (b) to article 740; *see also*, Dautreuil v. Degeyter, 436 So.2d 614 (La. App. 3d Cir. 1983) at 617; Yiannopoulos, Predial Servitudes: Creation by Title, 45 Tul. L.Rev. 459 (1971).

Article 749 of the Louisiana Civil Code provides that where the servitude agreement is silent as to the extent of the use of the servitude, "the intention of the parties is to be determined in light of its purpose". La. Civ. Code Ann. art. 749. In other words, where the act creating the servitude is silent as to the scope and use of the servitude, the purpose for the servitude controls. *See generally,* Simmons v. Bossier Levee District, 624 So.2d 935 (La. App. 2d Cir. 1993) at 953; Tournillon v. Sewerage & Water Bd. of New Orleans, 96-1457 (La. App. 4th Cir. 2/12/97) 689 So.2d 655.

The court below erred in its conclusion that the language of the petitioners' donation evidences no intent to restrict the use of the donation solely to the SPRP. As indicated above, the petitioners' donation and time again shows the intention of the parties to limit the easement to the use of a pipeline to transport oil for the purposes of the SPRP.

In Simmons, the court applied Louisiana Civil Code article 749 to limit the use of a servitude according to its stated purpose. 624 So.2d 935 at 953. The stated purpose of the servitude was an easement for utilities and drainage. The court stated, "The titles to these drainage servitudes are silent as to the extent and manner of the servitude's use. There is no evidence in this record suggesting that the servitudes were intended for anything other than drainage canals and ordinary maintenance thereof. The dredging activities here clearly exceeded ordinary maintenance . . ." Id. By the same token, in this case, the servitude clearly states its purpose was for use by the government to implement the SPRP. There is no language that allows the government to use the servitude and pipeline for any use or purpose other than the SPRP; therefore, the use of the servitude and pipeline for LIG's commercial purposes in the transportation of natural gas for profit clearly exceeds the scope of the petitioners' donation.

Nowhere is there expressed any intent that the servitude be used other than for the SPRP. The court appears to require that words of limitation be stated in a certain way. However, just as Louisiana Civil Code article 1559 does not require an express reversionary clause to cause a donation to revert back to the donor if the purpose of the donation ceases to exist, Louisiana Civil Code article 749 does not require any limitation on the scope of an easement to be stated in any particular way. Rather, if the extent of the scope is unclear in the agreement or title, reference must be made to the purpose of the servitude to determine its manner of use and extent. In the instant case, the purpose was clearly stated in the agreement and required the government to construct, operate and maintain a pipeline for the SPRP. Furthermore, and perhaps more importantly, Louisiana Civil Code article 730 requires that any doubt as to the interpretation of the servitude must be construed

in favor of the landowner/petitioners. La. Civ. Code Ann. art. 730 (West 1999).

D. <u>Impossibility of Use: Decommissioning the Pipeline Extinguished the Servitude</u>. Louisiana law dealing with the termination of predial servitudes was summarized by professor A. N. Yiannopoulos as follows:

> The permanent and total impossibility of use is not specifically enumerated in the Code as a cause of the extinction of predial servitudes. However, impossibility of use may be regarded as a cause of extinction inferentially established by articles 647 and 751. Article 647, which establishes the principle of utility, requires that a predial servitude confer a benefit on the dominant estate. If there is no benefit "[t]here is no predial servitude." Obviously, when there is a permanent and total impossibility of use, a predial servitude is useless and no longer exists. According to article 751, the total and permanent destruction of the dominant or servient estate is a cause of extinction of a predial servitude. In such a case, a permanent and total impossibility of use of the servitude must necessarily exist.

56 Tul L.Rev. at 1288-89.

The use of the petitioners' donation for the purpose for which it was granted has become an impossibility. It is impossible to use the pipeline to transport crude oil to the Weeks Island Facility because the government has decommissioned the pipeline and because the Weeks Island Facility is no longer technologically capable of use for the

SPRP.[25] Thus, the pipeline is no longer part of the SPRP. The petitioners donated the servitude specifically for the purposes of the SPRP, which can no longer be accomplished. For this reason alone, the petitioners' donation of servitude has terminated.[26]

According to the terms of the servitude agreement, upon termination for any reason the government had only two choices: (1) remove the pipeline within one year or (2) abandon it in place. *See*, Appendix E at 8-9. If the pipeline was abandoned in place, the pipeline became the property of the landowners. Although the government initially had a choice, once the government decided to decommission the pipeline and sell it to LIG it eliminated its option to remove the pipeline. Since it sold whatever interest it had in the pipeline to LIG it gave up any right to remove the pipeline. As a result, the only option available to the government was abandonment in place.

Although the donation does not define or otherwise describe the factors which would constitute abandonment under the agreement, Louisiana Civil Code article 3418 states the requirements for abandonment as follows: (1) relinquishment of possession and (2) intent to give up ownership. More importantly, Louisiana Civil Code article 493 provides that the owner of a construction permanently attached to the ground may remove such construction once he no longer has the right

---

[25]*See*, DOE News Release (Dec. 15. 1994), Record Excerpts, R. 1858-59; *See, also* DOE News Release (Jan. 29, 1996), R. 1440-41.

[26]*See*, Cascio v. DePaula, 27 So.2d 453 (La. App. 1st Cir. 1946) for an interpretation of a clause granting a donation made "for the cause of education." The court concluded that when the land is given for "education purposes", it reverts to the owners when a school built on the land is no longer used.

to keep it on the land of another. If he does not remove the construction within ninety days after written demand, the landowner acquires ownership of the construction. *See,* Guzzetta, 485 So.2d 508 at 511, *citing* La. Civ. Code Ann. art. 493. According to the complaint, petitioners made written demand for the removal of the pipeline and the government failed to remove it within the requisite 90 day period. Accordingly, petitioners are entitled to ownership of the pipeline either under the terms and conditions of the servitude agreement or under Louisiana Civil Code article art. 493 and should be placed in possession of the land and pipeline, which was the subject of the servitude agreement with the government.

CONCLUSION

For the foregoing reasons, petitioners request that the Court vacate the decision of the Fifth Circuit for lack of subject matter jurisdiction and remand the case to the district court to confirm the government's disclaimer. In the event the Court determines that it has jurisdiction over this matter, then petitioners request that the Court reverse the Fifth Circuit opinion and render judgment in favor of petitioners declaring that, when the government ceased using the servitude and pipeline for the purpose for which it was donated, ownership of the servitude and its improvements reverted back to petitioners.

Respectfully submitted,

GREGG L. SPYRIDON
SPYRIDON, KOCH, WALLACE
& PALERMO
3838 N. Causeway Boulevard, Suite 3010
Metairie, Louisiana 70002
Telephone: (504) 830-7800
Counsel for Petitioners